

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert A. Cano,)	C/A No. 8:10-2400-JFA-BHH
)	
Plaintiff,)	
v.)	
)	ORDER
Michael J. Astrue, Commissioner of)	
Social Security,)	
)	
Defendant.)	
_____)	

The *pro se* plaintiff, Robert A. Cano, brings this action pursuant to 42 U.S.C. § 405(g) to obtain judicial review of a final decision of the Commissioner of Social Security (“Commissioner”) denying his claim for Disability Insurance Benefits.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation suggesting that the complaint is subject to summary dismissal because the plaintiff has failed to pursue available administrative remedies. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The parties were advised of their right to submit objections to the Report and Recommendation which was filed on September 21, 2010. No objections have been filed and the time for doing so has expired.

After a careful review of the record and the Magistrate Judge’s Report, this court finds

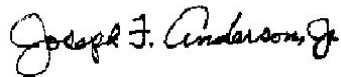
¹

The Magistrate Judge’s review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

that the plaintiff has not properly pursued his administrative remedies, thus, this court lacks subject matter jurisdiction because no final decision made after a hearing was rendered. *See Weinberger v. Salfi*, 422 U.S. 749, 763–64 (1975). The Report is adopted and incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

November 16, 2010
Columbia, South Carolina

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge